

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that two (2) copies of the attached pleading were served on the following individual this 21<sup>st</sup> day of May, 2007 by hand delivery:

Timothy J. Snyder  
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Wilmington, DE 19899-0391

/s/ Neal J. Levitsky, Esquire  
Neal J. Levitsky (No. 2092)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>LABORERS' WELFARE FUND OF DELAWARE LOCAL NO. 199, et al.</b>	<b>:</b>	
	<b>:</b>	
	<b>Plaintiffs,</b>	<b>Civil Action No. 07-CV-0055 (SLR)</b>
<b>v.</b>	<b>:</b>	<b>ELECTRONICALLY FILED</b>
	<b>:</b>	
<b>DAVID W. TALLEY GENERAL CONTRACTOR LLC,</b>	<b>:</b>	
	<b>:</b>	
	<b>Defendant.</b>	<b>:</b>

**DEFENDANT'S ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant David W. Talley General Contractor LLC, by its undersigned counsel, answers Plaintiffs' Complaint as follows:

1. Denied as a conclusion of law to which no response is required.
2. Denied as a conclusion of law to which no response is required.
3. Denied as a conclusion of law to which no response is required.
4. Denied as a conclusion of law to which no response is required.
5. Admitted in part; denied in part. While it is admitted that Defendant has its principal place of business at 199 Airport Road, New Castle, Delaware 19720, the remaining averments are denied as conclusions of law to which no response is required.
6. Denied as a conclusion of law to which no response is required.
7. Denied as a conclusion of law to which no response is required.
8. Denied as a conclusion of law to which no response is required.
9. Denied. After reasonable investigation, Defendant is without sufficient information to respond to the averments of paragraph 9 and they are denied.
10. Denied. After reasonable investigation, Defendant is without sufficient information to respond to the averments of paragraph 10 and they are denied.

11. Denied. After reasonable investigation, Defendant is without sufficient information to respond to the averments of paragraph 11 and they are denied.

12. Denied.

13. Denied.

14. The responses to paragraphs 1 through 13 of Plaintiffs' complaint are incorporated by reference as if fully set forth herein.

15. Denied as a conclusion of law to which no response is required.

16. Denied. After reasonable investigation, Defendant is without sufficient information to respond to the averments of paragraph 16 and they are denied.

17. Denied as a conclusion of law to which no response is required. To the extent that this averment is deemed to be factual, it is denied.

18. The responses to paragraphs 1 through 17 of Plaintiffs' complaint are incorporated by reference as if fully set forth herein.

19. Denied as a conclusion of law to which no response is required.

20. Denied as a conclusion of law to which no response is required. To the extent that this averment is deemed to be factual, it is denied.

WHEREFORE, Defendant requests that a judgment be entered in its favor along with costs and counsel fees and such other relief as the court deems just and proper.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs have failed to set forth causes of action upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Laborers International Union of North America, Local No. 199 AFL-CIO lacks standing to sue.

**THIRD AFFIRMATIVE DEFENSE**

Defendant asserts all defenses available to it under Section 515 of ERISA.

**FOURTH AFFIRMATIVE DEFENSE**

Defendant has not failed to permit the Funds to audit the books and records of the Defendant.

**FIFTH AFFIRMATIVE DEFENSE**

Defendant has supplied purchase orders and invoices for the time period being audited.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to mitigate any alleged damages.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are not entitled to any monies purportedly due and owing.

WHEREFORE, Defendant requests that a judgment be entered in its favor along with costs and counsel fees and such other relief as the court deems just and proper.

**FOX ROTHSCHILD LLP**

/s/ Neal J. Levitsky 2092  
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Attorneys for Defendant  
David W. Talley General Contractor LLC

Dated: May 21, 2007